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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-first session

SUMMARY RECORD OF THE 1530th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 8 August 2002, at 10 a.m.

Chairman: Mr. DIACONU

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Third and fourth periodic reports of Armenia (CERD/C/372/Add.3; HRI/CORE/1/Add.57) (continued)

1. At the invitation of the Chairman, the members of the delegation of Armenia resumed their places at the Committee table.

2. Mr. AMIR said that Armenia was a country that had disappeared for a time from the map and had later returned; it therefore had the right to protect its newly refound freedom and independence. It was now doing all it could to strengthen its national sovereignty, including through the protection of its national minorities. He congratulated the Government of Armenia on its efforts.

3. Mr. MNATSAKANIAN (Armenia) said that his Government was still in the process of learning. It had become clear during the dialogue with the Committee that his Government needed to pay greater attention to the appropriate use of definitions. He had taken note of the Committee's comments regarding the inappropriate use of the term "mono-ethnic" in paragraph 5 of the third and fourth periodic reports (CERD/C/372/Add.3) to describe the population.

4. Mr. KOCHARIAN (Armenia) said that the term had been used to highlight the fact that a relatively small number of ethnic minorities lived at present in Armenia. The definition that had been used in the core document (HRI/CORE/1/Add.57) would be used in future reports. In reply to a question about the statistics reflecting the demographic composition of the population, he said that the recent political and economic changes had caused unprecedented population movements that made it difficult to provide accurate data on national minorities. The Government had relied on information provided by non-governmental organizations (NGOs), the Union of Nationalities of Armenia and the National Statistical Services. The results from the 2001 census, which had not yet been finalized, would be reflected in the fifth periodic report.

5. In reply to questions about racially motivated crimes, he said that the Ministry of Foreign Affairs had made some enquiries to various government bodies and had discovered that no information was available about such crimes. He acknowledged the need to raise awareness of the issue and to reveal any such crimes.

6. The report had contained no information about the recent visit to Armenia of the Special Representative of the Secretary-General on internally displaced persons because the visit had taken place after publication of the report. The visit had coincided with government discussions on ways to address the issue of internally displaced persons, of whom there were an estimated 192,000 in Armenia. Some 72,000 had been displaced as a result of military operations in areas bordering Azerbaijan owing to the Nagorny Karabakh conflict, and the remainder had been uprooted as a result of natural or human-made disasters. Since independence, the Government had issued over 50 decrees and decisions to bring relief to refugees and displaced persons.

At the end of 2000, the Government had approved the concept of migration regulation, which determined nine priority areas, one of which was internally displaced persons. The Department for Migration and Refugees had developed a project on the post-conflict rehabilitation of border territories to address the rehabilitation and reintegration needs of persons internally displaced by conflict.

7. Refugees represented 10 per cent of the entire population, a fact that had a significant political and economic impact on the country. In 1993, the Government had received substantial support from the international community, including the Office of the United Nations High Commissioner for Refugees (UNHCR), to provide emergency relief for refugees. However, given the complexity of the problem, the integration of refugees into Armenian society had been very slow and had led to a feeling of isolation among the refugee community; approximately 13,000 refugee families were currently living in temporary accommodation, the unemployment rate among refugees was three and a half times higher than the national average (currently 11.5 per cent) and no progress had been made in securing compensation for property left behind in Azerbaijan. Nevertheless, efforts to promote integration were continuing; for example, a series of laws and decisions had been adopted in recent years to guarantee the rights of refugees. A special centre was being built to receive new refugees. The process of granting citizenship to refugees was regulated by the Refugees Act and was consistent with the 1951 Convention relating to the Status of Refugees. Many refugees were aware that they enjoyed rights equal to those of citizens and were reluctant to apply for citizenship, fearing the loss of refugee benefits and all chances of possible compensation.

8. Unfortunately, no statistics were available to illustrate the participation of national minorities in the economic and social development of the country. Although national minorities were not currently represented in the National Assembly, there was no barrier to the participation of minorities in public affairs and national minorities occupied high-level posts in local self-government bodies and human rights bodies. While there was no Arab community as such in Armenia, Arabs did form a part of society. A mosque had been restored in Yerevan to provide Muslims with a place of worship.

9. In reply to a question about the Armenian diaspora, he said that the difficult social and economic situation meant that people continued to emigrate in search of work or for family reunification. According to estimates, some 800,000 people had emigrated since 1992, constituting almost a quarter of the total population. The socio-economic situation had improved between 1998 and 2000 and living standards had improved. Nonetheless, the emigration trends had not changed. The Armenian diaspora consisted of some 6 million people.

10. Mr. OSIKYAN (Armenia) said that, in order to meet the commitments it had entered into on joining the Council of Europe, Armenia had drafted a new Criminal Code which was due to enter into force in 2003. Article 226 of the new Code, which stated that the incitation of national, racial or religious hatred was a punishable offence, would eliminate the conflict between article 4 of the Convention and article 69 of the current Criminal Code. Other articles also provided national minorities with protection.

11. Mr. KOCHARIAN (Armenia) said that the Coordinating Council of National Minorities was the State structure for national minorities; the Government was currently discussing the possibility of creating a new structure to address the issue. Following a decision by the Prime Minister, there was a new vacancy in the Prime Minister's Office for an official responsible for national minority issues. In reply to a question about the financing of the media, he said that the Government had decided that a special budget would be earmarked for the financing of newspapers. On the issue of the Armenian Apostolic Church, he said that the Church was supportive of the 14 different religious movements currently registered in Armenia in recognition of the right to freedom of thought, conscience and religion enshrined in the Constitution. On accession to the Council of Europe, Armenia had undertaken to ensure that all churches and all religious communities, in particular those referred to as non-traditional, could practice their religion without discrimination. Therefore, the National Assembly had recently ratified a new law on freedom of conscience and religious organizations.

12. A programme to reform the penitentiary system was currently being implemented. The first phase, which involved the transfer of responsibility for the system from the Ministry of the Interior to the Ministry of Justice, had been successfully completed. The second phase, which involved the development of the system under the Ministry of Justice, was under way. The aim of the Penitentiary Code was to stipulate the procedures for applying and exercising criminal sentences and the necessary conditions for the correction of prisoners, to guarantee the protection of their rights and freedoms and to facilitate their social rehabilitation. With regard to the gender proportion in prisons, he said that latest figures indicated that 7,000 men and 900 women were currently in detention. All prisons had designated places for religious worship.

13. The social welfare system had been established by Presidential decree in 1991 and was not without its shortcomings. A system of personal accounting had not been introduced, and pension amounts were not dependent on paid-in contributions. Pension provision for Armenian citizens was guaranteed by the State Pensions Act, which had been adopted by the National Assembly in December 1995. Under the statute, every citizen was entitled to a State pension. The Act extended to aliens and stateless persons resident in Armenia unless otherwise specified in Armenian law and the international treaties to which Armenia was a party. Under the 1997 Compulsory Social Insurance Contributions Act, employee social insurance contributions were set at 3 per cent of wages.

14. In reply to a question about poverty levels, he said that a special working group on poverty eradication had been created as part of a joint project with the World Bank. A round-table meeting had recently been held with the participation of interested parties. Consequently, the Ministry of Economy had released new figures and updated information about poverty lines, indicating a decline in the percentage of the population living in extreme poverty, from 23 to 16 per cent.

15. Mr. OSIKYAN (Armenia) said that NGOs had to register by law. Their application could be refused if the required documents were not provided. The State had the authority to request the liquidation of an NGO or a non-profit organization before a court if it was suspected that the organization's activities were directed towards the incitement of national, racial or religious hatred. On the issue of voting rights, a law had recently been enacted to amend the Electoral Code, giving refugees the right to participate in the electoral process.

16. Mr. KOCHARIAN (Armenia) said that the Education Act of 1999 laid down identical educational principles and rights to education for all Armenian citizens without restriction or discrimination of any kind. In addition to general-purpose schools, there were Russian schools and a Russian-Armenian University. Russian was taught in a number of schools, and Kurdish was taught in schools in areas with Kurdish populations. Other languages taught in schools included Greek, Persian, Syrian and Arabic. Recently, on the initiative of the Union of Nationalities, a foreign language institute had opened, offering classes in Ukrainian, Russian, Kurdish and German.

17. The Department for Migration and Refugees had coordinated the drafting of the bill on national minorities, and representatives of ethnic groups and of the Coordinating Council of National Minorities had actively participated in that process. The bill prohibited all forms of racial discrimination and ensured equality before the law without distinction as to race, skin colour, or national or ethnic origin. It also provided for the protection of the political, economic, social, legal, ethnic, linguistic, cultural and religious rights of national minorities, ensured their equal right to access to education, employment and housing and guaranteed their right to take part in the conduct of public affairs. It also specified that each citizen could freely determine his national identity, and that the State could not interfere with that definition.

18. Mr. OSIKYAN (Armenia) said that, under the Armenian Constitution, any international instrument took effect only after ratification. Once ratified, it became part of the country's legal apparatus and its provisions prevailed over those of domestic laws. However, if an international instrument contradicted the Constitution, it was necessary to amend the Constitution before it could be ratified.

19. Mr. KOCHARIAN (Armenia) said that the Presidential Commission on Human Rights examined individual complaints involving, for example, ill-treatment and torture.

20. Under a memorandum of understanding between the Armenian Government and the Office for Democratic Institutions and Human Rights (ODIHR), a number of human rights programmes, including public awareness programmes, were being conducted. Each year, six television programmes were produced on human rights matters, including the rights of soldiers, women, children and vulnerable groups; they were shown on national and regional television, and copies were provided to human rights organizations. A round table on religious and ethnic tolerance had been held, and participants included representatives of the Council of Europe, the ODIHR, the Office of the United Nations High Commissioner for Human Rights, and national and religious organizations.

21. Armenian academic circles had also shown a keen interest in national minorities, and recently a work had been published examining the social, economic, ethnographic, cultural, political and legal problems facing Armenian minorities. Training programmes were being offered for teachers in human rights and in building a culture of tolerance. Human rights courses had been introduced into elementary schools, and manuals were being prepared for secondary schools.

22. Mr. OSIKYAN (Armenia) said that article 25 of the Refugees Act contained no restrictions on the refugees who had arrived during the period from 1988 to 1992; those refugees received the same protections as others, and there was no discrimination under the law.

23. Mr. KOCHARIAN (Armenia) thanked the Committee for its references to the history of Armenia, in particular the genocide that had occurred in that country, and for its remarks regarding the economic and social difficulties it was undergoing as a result of blockades by neighbouring countries. He reiterated the firm commitment of his Government to all international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, and expected that the Committee's observations and recommendations would reinforce his Government's undertakings in that regard. Finally, he apologized for any unanswered questions; they would be answered in the next report.

24. Mr. SICILIANOS said that the delegation seemed to have misunderstood his question regarding article 25 of the Refugees Act. That article indeed stipulated that restrictions on refugees were not applicable to refugees who had entered the country between 1998 and 1992. Those refugees were almost exclusively ethnic Armenians fleeing from Azerbaijan. The article, in effect, conceded that there were restrictions on refugees that entered during other years: he was concerned about discrimination against them, not against ethnic Armenians.

25. Ms. JANUARY-BARDILL remarked that the report used the term "refugees" when it was perhaps more correct to speak of "returnees." That conceptual distinction might be the source of some confusion.

26. Mr. KJAERUM reiterated his request for clarification on allegations of discrimination made by the Yezid minority.

27. Mr. OSIKYAN (Armenia) said that article 25 of the Refugees Act stated that all legal provisions which restricted the rights of refugees were not applicable to persons who had entered Armenia between 1988 and 1992. If that provision presented a problem, the Government would willingly modify it.

28. Mr. KOCHARIAN (Armenia) said that the round-table meeting had revealed that there was an unusually high level of ethnic tolerance in Armenia, and that any tensions were more among religious than ethnic groups. There was some dispute, for example, between Kurds and Yezids about the groups they belonged to; the Government had consequently incorporated a provision into the draft law on national minorities allowing individuals to determine to which nationality they belonged. The Union of Nationalities had collected data on the Kurds and Yezids; apparently the Yezids considered themselves a separate nationality, and professed to follow a pagan religion.

29. Regarding refugees and returnees, he referred the Committee to the definition of a refugee contained in article 1 of the Refugees Act, which specified that a refugee was a non-Armenian citizen. The Government had made the commitment to allow all Armenian compatriots to return to that country, and special reintegration and readmission programmes had been created for returnees.

30. Mr. YUTZIS (Country Rapporteur) said that the dialogue had been a learning experience for both the Committee and for the delegation of Armenia. The crucial question whether Armenia was in fact a mono-ethnic country should be analysed and debated by the Government and by civil society organizations. Questions also remained about the definition of the term "minorities." He noted that the Government of Armenia had made a verbal commitment to modify article 25 of the Refugees Act. The delegation had indicated that the non-traditional churches had the same rights as the traditional churches, including the national church of Armenia. It had also revealed that refugees were permitted to participate in the electoral process.

31. More precise and detailed statistics were necessary. In addition, the Committee would like information on complaints of racial discrimination and on any judicial action that had been taken in response to them. Article 69 of the Criminal Code provided punishments for private persons who incited racial or national enmity; the Government should consider extending that provision to cover institutions and organizations as well.

32. Mr. MNATSAKANIAN (Armenia) said that the consideration of the report had been an important exercise for the Government of Armenia. It was in the process of preparing reports for other international bodies, including the Council of Europe, and greatly valued the assistance and support it was receiving from the world community in its efforts to build democracy.

33. The delegation of Armenia withdrew.

The meeting was suspended at 11.20 a.m. and resumed at 11.35 a.m.

Dialogue on the preliminary version of the sixth to fifteenth periodic reports of Fiji (HRI/CORE/1/Add.76; sixth to fifteenth periodic reports (preliminary version, document without a symbol); shadow report)

34. At the invitation of the Chairman, Mr. Mataitoga (Fiji) took his place at the Committee table.

35. The CHAIRMAN welcomed the representative of Fiji whose presence demonstrated the willingness of his Government to renew its dialogue with the Committee and to fulfil its reporting obligations under the Convention. The discussion would necessarily be a preliminary one since the Committee had only just received a copy of the document containing the report.

36. Ms. JANUARY-BARDILL (Country Rapporteur) said that the Committee had also received a shadow report prepared by the Fiji NGO Coalition on Human Rights, at the request of the Fiji Government, which reflected the concerns of members of Fiji's civil society regarding the political instability in the country which was causing social fragmentation and economic decline. The Committee looked forward to considering in detail an amplified version of the report at its March 2003 session.

37. Mr. HERNDL, referring to paragraph 193 of the preliminary report, said that more information on why the Fiji Government had opted not to make the declaration under article 14 of the Convention would be welcome.

38. Mr. ABOUL-NASR observed that the right of individual petition was an optional clause.

39. In reply, Mr. HERNDL pointed out that it would be helpful if the Fiji Government were to specify the remedies that were available under domestic and international law for violations of the rights set out in the Convention.

40. He drew attention to the following paragraphs in the preliminary report which, inter alia, contained omissions: paragraphs 55, 77, 92 (table), 94, 150, 152, 128 and 190.

41. Mr. de GOUTTES said he had noted in the 2002 Amnesty International Report that a court challenge against the ethnic imbalance in the Fiji Government was pending and that the caretaker Government had cancelled the charity status of the Citizens Constitutional Forum, a multi-ethnic NGO, after it had filed constitutional challenges against the Government in court. Those were serious issues which needed to be explained in the report which the Committee would be considering at its March 2003 session.

42. Mr. THORNBERRY noted that the document articulated the extensive reservations of the Fiji Government to the Convention. There was, of course, provision for reservations, but that need not prevent the Committee from discussing those reservations as it had done in the case of other States parties. Of particular concern was the relationship between the specific rights of the indigenous inhabitants of Fiji and the general principles of international human rights law, for example on non-discrimination, especially in view of Fiji's strong support for the United Nations draft declaration on indigenous peoples and its ratification of International Labour Organization (ILO) Convention No. 169 Concerning the Rights of Indigenous and Tribal Peoples in Independent Countries.

43. Mr. AMIR observed that Fiji had only been an independent nation for 32 years, which might explain why it was having difficulty replying to the Committee's questions.

44. Mr. YUTZIS said that if it were acceptable he would submit his comments in writing to enable them to be taken into account when the report was being completed.

45. Mr. MATAITOGA (Fiji) assured the Committee that his Government was committed to providing a full report and that the issues members had raised would be addressed. It would be appreciated if any further questions were forwarded promptly. The missing information would be supplied within a reasonable period of time.

46. Ms. JANUARY-BARDILL (Country Rapporteur) said that NGOs should be encouraged to make further contributions while the report was being finalized. In its current form the report was too descriptive in style; it would be much improved if the final version were more analytical.

47. The CHAIRMAN said in conclusion that the report should be completed by 30 September 2002; that the substantive issues raised by Committee members should be taken into account either in the body of the report or orally; and that it would be placed on the agenda of the March 2003 session for consideration.

The meeting rose at 12.10 p.m.

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International Convention on the Elimination of all Forms of Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-first session

SUMMARY RECORD OF THE 1531st MEETING

Held at the Palais des Nations, Geneva,
on Friday, 9 August 2002, at 10 a.m.

Chairman: Mr. DIACONU

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THEMATIC DISCUSSION ON DISCRIMINATION BASED ON DESCENT

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The meeting was called to order at 10.15 a.m.

THEMATIC DISCUSSION ON DISCRIMINATION BASED ON DESCENT

1. The CHAIRMAN invited Committee members to present their comments in response to the informal discussion with non-governmental organizations (NGOs) and States parties that had taken place the previous afternoon.

2. Mr. ABOUL-NASR said that most speakers had focused either on caste systems or on a critique of European countries, with emphasis on the problems experienced by developing countries as a result of slavery and colonialism. He had wondered whether invitations to the thematic discussion had been sent to all NGOs with consultative status in the Economic and Social Council, and, having looked into the matter, discovered that they had not. He would be interested to know who had prepared the invitation list, and on what basis. The NGOs in attendance predominantly represented one group.

3. He strongly disagreed with the interpretation of the term "descent" to mean merely "caste", an important aspect of descent but surely not the sum of it. He also disapproved of the discussion of the definition of the term "descent" in the internal note prepared by the Secretariat for the purpose of the thematic discussion, contained in paragraph 7 of document CERD/C/60/Misc.13. He questioned whether a discussion of descent should ignore the headlines of the day's papers, such as, for example, Mr. Sharon's proposal that Palestinians should be removed from Israel, or a decision of the Australian courts on the matter of Aboriginal rights. It was not acceptable for the Committee to limit its discussion of descent to the problem of caste in India and in several African countries.

4. Mr. PILLAI said he had been struck by the absence of any presentation on descent-based discrimination in Europe, Australia or the Americas. It appeared to be customary practice now for passengers on flights to Europe from India to be subjected to addition security checks and to require passengers from India to hold transit visas in order to change planes, even if they never left the airport. Indian newspapers frequently carried stories of Asian passengers traumatized by immigration and security officials in the Americas. Little had been heard from developed countries regarding how they proposed to deal with the emerging trend of systemic discrimination based on descent against Asians as a result of the events of the previous year.

5. The consideration of the tenth to fourteenth periodic reports of India to the Committee in 1996 had been a milestone in the interpretation of the Convention and in the work of the Committee, clearly establishing that the role of the Committee included the examination of social as well as racial discrimination. Since then, there had been considerable international debate on that position, and other human rights treaty monitoring bodies and the Sub-Commission on the Promotion and Protection of Human Rights had accorded greater attention to the matter. Consideration of that issue in connection with subsequent State party reports had prompted mixed responses: Japan, for example, had disagreed with the Committee's position, and Nepal had accepted it. The academic community had also taken an interest, and many papers had been written on the matter of descent-based discrimination and the role of the Convention in handling it, among them one by the Japanese professor of international law,

Mr. Murakami, who had spoken the previous day, contending that the broadest interpretation of the term "descent" was the most appropriate, and would not lead to an unjustifiable expansion of the role of the Convention.

6. Although the NGO Declaration delivered at the close of the World Conference against Racism had stressed discrimination based on descent in a social context, the Declaration and Programme of Action of the World Conference had stressed discrimination based on descent in a racial context, in particular as it applied to the African and Asian diaspora. The Committee must not let that divergence of views influence either its perceptions or its work. The Convention was the best instrument currently available for achieving a balanced approach to that issue. Nor must the Committee abandon its approach that issues of discrimination based on descent must not be limited to the racial context.

7. The scope and meaning of the Convention must be seen as inclusive rather than exclusive. The Committee could not, therefore, ignore the conclusions of Declaration and Programme of Action with respect to the problems faced by the African and Asian diaspora, or those faced by people of Asian descent in the wake of the events of 11 September 2001. In his view, the lack of agreement among States parties on the issue must not continue. Referring to the position taken by the National Human Rights Council of India at the World Conference against Racism accepting that caste discrimination in India was a major human rights issue, he said that the United Nations human rights bodies could be expected to discuss it as such. Japan and India must reconsider their views with respect to the competence of the Committee to consider the issue of descent-based discrimination. That being said, the States parties' own efforts to overcome such discrimination, as emerged from their dialogue with the Committee when the periodic reports were discussed, should be given due attention.

8. There were similarities and differences in the discriminatory social and other practices of different countries and, unless the Committee could find some common denominator identifying all such practices as caste discrimination, it should continue to use the expression "discrimination based on descent", and should employ the term "caste" only with reference to countries where, in their own terms, castes existed. He shared the view that studies of caste systems must be undertaken. Since more than 200 million people in South Asia suffered from discrimination deriving from caste practices, discrimination on the basis of caste must occupy a permanent place in the Committee's deliberations. The Committee must, however, resist any temptation to regard that form of discrimination as the only discrimination based on descent.

9. In view of the harsh treatment of Asians in Europe and the Americas as a result of the events of 11 September 2001, which transcended national and religious distinctions, the Committee should take a comprehensive and inclusive approach to the diverse issues of discrimination based on descent.

10. The general recommendation to be formulated by the Committee in the light of its enhanced understanding of the issue must be generally applicable. Considering the lack of data about descent-based discrimination in Europe, Australia or the Americas and the sketchy information on the situation in such countries as Senegal, Somalia or Nigeria, he felt that the Committee did not have enough information at its disposal and should consider resuming the discussion with a somewhat different emphasis. If it did wish to begin work on a general

recommendation, he proposed that it should concentrate on the efficiency and commitment of implementation mechanisms where well-developed policies and programmes existed; the creation and strengthening of mechanisms where such mechanisms were non-existent or inadequate; a clear policy for tackling social attitudes, especially among policy makers and in bureaucracies; greater attention to the criminal justice system and to educational systems; the role of NGOs; and stereotypes based on descent.

11. Mr. THORNBERRY said that the accounts of victims of descent-based discrimination and their supporters had forcefully brought home the fact that such discrimination was a harsh reality for many millions of human beings. He would not return to the history of the debate over the word "descent". When interpreting the Convention, each term should be given a meaning that added something to the others. The intention of the drafters was less important than the text they had drafted. As a basis of discrimination, the term "descent" signified forms of inherited status. Under the Convention some - though not all - instances of descent-based discrimination might equally be addressed under the criteria of race or colour, and ethnic or national origin. The term "descent" indeed added something to the Convention and, like the other human attributes mentioned in article 1, it was non-negotiable. The question of communities of inherited status was analogous to other terms in the Convention in that the group concerned might be treated as though it were a separate race or ethnicity. By the same token, the Committee had also shown great concern for the status of minorities and indigenous peoples.

12. The Committee did not need a vast study of possible meanings, or a final definition of descent-based discrimination. The term was clear, and encompassed caste and other analogous systems of social stratification based on birth. Systems of social stratification arose by many means and had been perpetuated for various reasons. The terms "descent" and "race" had been frequently used interchangeably in earlier academic writings. Although caste was not an Orientalist or colonial creation, it had been systematized by the colonial powers. He was sceptical of assertions that caste systems had a millennial religious basis, an argument that enhanced their scope and power. Nor was he surprised that upper castes supported the caste system: religion, like ethnicity, could be a convenient cloak for power. If it was asked whether the Committee was not intruding into historical, cultural or religious systems, it might equally be asked whose culture was involved, and who spoke for that culture. The sense of belonging and meaning provided by a caste was greatly weakened when caste members contested the validity of their condition.

13. Caste systems represented hierarchy, not equality; segregation, not integration; bondage, not freedom; and value determined at birth without regard for morality, achievement, intelligence or character. He would not offer a strict definition of descent-based discrimination or caste. The existence of such discrimination was a matter of fact. He agreed with Mr. Pillai that its scope was wide, and that caste was one of its facets.

14. If the Committee were to adopt a general recommendation, it should focus on the need to encourage Governments to report on the existence of castes, and to take action in a constructive spirit to eliminate such discrimination. The Committee should propose to work with Governments to encourage States to take action or further action, and to share with each other models of good practice.

15. Mr. THIAM said that his country, Guinea, was composed of 14 ethnic groups, each made up of tribes, within which were castes. He had observed many degrees, differences and nuances in the manifestation of discrimination based on descent. Descent was drawn from birth, and was the umbilical cord tying a person to a community. The community was a family, a tribe, an ethnic group or a caste. Even within an ethnic group, there were differences between men and women based on descent. His children had more rights than the children of his sister because his were the descendants of a man.

16. Currently, people from certain countries or nationalities had to have visas in order to pass through the airports of certain other countries. Limiting the discussion of descent-based discrimination to caste would be tantamount to concluding that discrimination on regional, religious, ethnic, or linguistic grounds did not exist. The Committee must, in his view, give the broadest possible definition to the concept of descent. Descent was not biological, but social and cultural. A person was born without a definition, and others attached a definition to him that limited his rights and inflicted suffering on him.

17. In order to combat discrimination on the grounds of descent, the Committee, in its recommendations, should encourage those countries where there was still a caste system to introduce the necessary measures, including literacy programmes, to provide impoverished minorities - who were all too often the victims of the caste system and consequently condemned to what amounted to slavery - with the means necessary to lift themselves out of poverty. Only when they had economic independence would they be able to fight for their cultural and other rights. In his view, any definition of descent should extend well beyond the confines of caste and encompass, inter alia, ethnicity, tribe and region.

18. Mr. VALENCIA RODRIGUEZ recalled that article 1 of the Convention had established five grounds of racial discrimination, each of which had its own meaning and scope. The term "descent" implied one generation inheriting from another specific characteristics that were positively or negatively evaluated by society. The resulting stratification of some societies had led to the emergence of groups of people who were excluded from the rest of society and regarded as "untouchable".

19. It had been argued that the concept of "descent" was already covered by the other four concepts, especially race, and that, furthermore, it should be interpreted in accordance with national legislation and the particular circumstances of individual countries. If that were true, the concept of descent would not have been specifically mentioned in the Convention; moreover, the main requirement in the interpretation of a Convention was that its provisions should be of a general nature and independent of national legislation and circumstances. It had also been argued that descent-based differences had social or class origins, not racial ones, and that the term "descent" had been included in the Convention in order to clarify certain ambiguities arising from such terms as "place of origin" and "national origin". However, it should be recognized that acts of racial discrimination, regardless of their causes, were a reflection of the society that perpetrated them, whether or not they were sanctioned by law.

20. He recalled that the definition and scope of "descent" had been established in a number of international legal instruments, including Sub-Commission resolution 2000/4 (E/CN.4/Sub.2/2001/16) and the Committee's own General Recommendation XIV. On that

basis and, contrary to the assertion made by India in its 1996 report (CERD/C/299/Add.3, para. 7) it was clear that the term "descent" mentioned in article 1 of the Convention did not refer exclusively to race. The Committee had reiterated its position that the term "descent" had its own meaning and was not to be confused with race or ethnic or national origin when considering the initial and second reports of Japan (CERD/C/304/Add.114, para. 8).

21. Like Mr. Thornberry and Mr. Thiam, he considered that the five concepts should all be on the same legal footing and subject to a balanced and equal interpretation. To maintain conformity with the objectives of the Convention, "descent" should be interpreted in a way that afforded protection to those groups that were discriminated against on the grounds of certain inherited characteristics which, by tradition, society regarded as negative or which set them apart. Moreover, such an approach accorded with the preamble to the Convention, which affirmed the determination to eliminate racial discrimination throughout the world in all its forms and manifestations. Finally, it should be borne in mind that more than 250 million people worldwide suffered either directly or indirectly from discrimination based on descent.

22. Mr. SICILIANOS noted with satisfaction that, although there had been differences of opinion regarding the interpretation of article 1 of the Convention, the States parties that had taken the floor during the thematic discussion had openly recognized the existence of descent-based racial segregation in their countries and had undertaken to deal with the problem.

23. It was the first time in the history of the United Nations that a discussion on descent with the participation of both NGOs and States parties had taken place and it would be unfortunate if such a memorable event were to be marred by lasting disputes over the interpretation of the scope and definition of "descent" in article 1 of the Convention. He consequently suggested the insertion in the proposed general recommendation on descent of a subparagraph entitled "Discrimination based on descent: the problem of caste".

24. He further proposed that, in the preamble to the general recommendation, reference should be made to the relevant instruments, including the Universal Declaration of Human Rights, the 1993 Vienna Declaration and Programme of Action, in particular, paragraph 5, and the Declaration and Programme of Action of the World Conference against Racism; that the Committee should reaffirm its position on discrimination based on descent, including the caste and other similar systems, with regard to implementation of the Convention; and that mention should be made of the public thematic discussion on descent-based discrimination and the contribution of States parties, NGOs and experts.

25. With regard to the operative paragraphs, he proposed that the following actions should be included: the Committee should seek information from Governments on the measures, including legislative measures, they were taking to eradicate caste-based discrimination, particularly the double discrimination suffered by women; States should ensure that their legal frameworks, regardless of their level of development, should be straightforward and user-friendly; existing laws must be implemented; positive measures should be taken and dedicated bodies established to assist the victims of descent-based discrimination; greater access to justice by the affected communities should be ensured; the role of the police should be evaluated; segregation in education, the workplace and public places should be abolished; incitement to hatred and the dissemination of ideas of racial superiority should be prohibited; the civil, political, economic,

social and cultural rights of the affected communities should be promoted and protected; and States should be encouraged to use education and the media to raise public awareness of the need to eliminate descent-based discrimination.

26. Mr. KJAERUM regretted that more States parties had not participated in the thematic discussion, but welcomed the contribution of so many NGOs. The nature of the violations against the inherent dignity of human beings that had been described clearly demonstrated that the underlying causes could not simply be attributed to culture, religion or tradition, but were a human rights issue created by descent-based discrimination. With regard to the definition of descent, on which the Committee had adopted a position and developed a practice, the key element was that some people were born into a group which they had no possibility of leaving.

27. He supported the proposal to elaborate a general recommendation on descent. It would assist Governments when reporting to the Committee and NGOs in providing supplementary information by giving them a clearer idea of what the Committee regarded as the core issues. It should also enable Committee members to be more consistent when considering States' reports. In that respect, European countries with Asian and Somali communities, in which descent-based discrimination was still prevalent, should address the issue in their future reports and take steps to ensure that the afflicted communities were not also discriminated against by the majority population, as Mr. Pillai had mentioned.

28. The general recommendation needed to be user-friendly; it might take the same form as that on Roma which was substantive without being cumbersome. Consideration should be given to the fact that several States had already introduced legislation prohibiting descent-based discrimination and had even established affirmative action programmes. However, their governments generally had many decades of tradition behind them and might also have a vested interest in maintaining the status quo, a factor which complicated the issue still further.

29. Mr. LINDGREN ALVES recalled that there had been obstacles to discussion of the issue of descent at the World Conference in Durban. The Committee agreed that the scope and meaning of descent in the Convention went beyond caste. What was still at issue was whether it differed from race. He, too, supported the elaboration of a general recommendation and agreed with Mr Sicilianos' suggestion regarding the proposed subparagraph.

30. He agreed that the Committee's approach should be broad and that criticism should not be levelled at individual countries. Nevertheless, India was a special case, as the Government had itself pointed out. The persistence of the problem stemmed from a millenia-old tradition and it was very difficult to change society. The Government of India had commendably introduced legislation on discrimination and established affirmative action programmes, but implementation proved problematic. Part of the problem arose from the fact that the authority of Governments generally had been weakened by economic globalization and the growing conception of governments as ineffectual. Such a situation was also serious from the point of view of human rights since Governments were responsible for their promotion and protection. It also reinforced the need for a general recommendation on descent, not only for the benefit of States, but also to raise awareness among the leaders of multinational corporations with investments in countries

where the caste system persisted, to encourage them to treat afflicted communities preferentially in the matter of employment. In that respect, he agreed with Mr Thiam that poverty was the most serious obstacle to implementation of anti-discrimination legislation.

31. With regard to the fashionable concept of multiculturalism, he disagreed with its advocates because, in his view, it gave indirect support to the continuation of harmful traditions. The Committee should therefore continue to be inspired by the universal values of human rights as laid down in paragraph 5 of the 1993 Vienna Declaration.

32. Mr. TANG Chengyuan said that, despite the very full discussion on the definition of descent that had taken place, none had yet been agreed upon. That was because the issue was both widespread and complex. He saw inheritance as the most important aspect of the debate. Race, colour and culture were all inherited characteristics, but even among people of the same skin colour, groups of people were singled out and discriminated against. What all the afflicted groups had in common, however, was inherited poverty.

33. He agreed with Mr. Aboul-Nasr that a broad definition would therefore be best, one that was global yet took account of the situation in individual countries. Attention should be focused on eliminating discrimination against one group of people by another. He had noted the positive measures that had been adopted in many countries. Now the challenge was to ensure that they were implemented. The Committee should work with Governments to find effective solutions that would eventually lead to the elimination of all forms of racial discrimination.

34. Mr. AMIR said that it was important not to focus on the problems in one country, which might imply that a particular set of problems was peculiar to that country and therefore insignificant in a wider context. The question of how far back one should trace one's lineage in order to define one's identity was certainly a knotty one; accordingly, to avoid sterile theoretical debate, it might be wiser to concentrate on grave injustices in the world today, such as the plight of the Palestinians, who were being subjected to flagrant discrimination and oppression on a daily basis.

35. Mr. RESHETOV said that decisions to distinguish between a superior and inferior group of people lay at the heart of descent-based discrimination. The criteria used in drawing such distinctions were often very subtle and intricate. In the former Soviet Union, the authorities had routinely asked probing questions about a person's class origin, or whether a person had spent time in enemy-occupied territory during the war. People who supplied undesirable answers were excluded from good jobs. It had come to his attention, although he was willing to be corrected on the point, that the Government of the Czech Republic had a policy of asking people to reveal whether they had been employed in the government apparatus under the previous regime. The implications of such an enquiry were clear. In Sri Lanka, ethnic Tamils apparently had great difficulty in obtaining Sri Lankan citizenship, even though they had been born in Sri Lanka. Persons of Russian descent in the Baltic States were currently subject to various forms of discrimination; for example, in Estonia, native Russian-speakers in custody were permitted to lodge complaints only in the Estonian language, and it had to be good Estonian at that. In Latvia, ethnic Russians were forbidden to participate in elections or establish their own political

parties. In its general recommendation, the Committee would have to establish some kind of monitoring mechanism, specify certain standards, and instruct States parties to include information about descent-based discrimination in their reports.

36. Mr. YUTZIS said that, when interpreting the terms used in the Convention, the Committee should always be alert to the danger of over-analysis and the risk of sounding platitudinous. Yet at the same time the ambiguous connotations of certain words or expressions should not be allowed to obscure their essential import. Descent was more than just the question of caste, yet caste should not be excluded from the debate. However formulated, the general recommendation should call on States parties to detect and monitor manifestations of descent-based discrimination and develop appropriate instruments to complement the Committee's deliberations on the matter.

37. Ms. JANUARY-BARDILL said that discrimination was merely one component of a much wider concept, namely oppression, a word which was not often heard nowadays, perhaps because it was felt to be too threatening. The term "discrimination" was blander; it failed to evoke dehumanization, tokenization, humiliation and disenfranchisement - in short, the systematic denial of a person's humanity. She hoped that, in speaking of descent, the Committee would not forget that the word encompassed all those things too.

38. It was perhaps easier to decide who to include in rather than who to exclude from a debate about descent. Descent-based discrimination rested on biological differences such as skin colour and social differences such as caste. It also incorporated elements of gender and sexual orientation. It was supported by very powerful, ingrained ideologies that were transmitted and exercised through religion, education, clubs and societies, financial institutions, the legal structure and political processes. The end result was always poverty and deprivation. But who or what should be ruled out of the discussion? What about the British class system, for instance? It should be frankly recognized that education alone was incapable of eradicating centuries of social and cultural conditioning; while not neglecting legal, political and economic solutions to the problem of descent-based discrimination, greater weight should perhaps be given to the social and cultural forces at work in society.

39. Mr. de GOUTTES said that the decision to hold a thematic discussion on discrimination on grounds of descent was a historic initiative. He expressed gratitude for the information that had been provided by NGOs during the informal discussion held the previous day, which had illustrated a courageous commitment to the issue by certain individuals.

40. As Mr. Aboul-Nasr had pointed out, it was virtually impossible to address all forms of discrimination on the basis of descent in the context of the current debate. Caste was just one source of such discrimination. It was difficult to define the term "caste", which should not be confused with "social class". It did not refer to the de facto family, cultural or professional hierarchies that existed in most societies and did not lead to any form of exclusion or discrimination, nor did it refer to all vulnerable groups of people; for example, the Roma did not belong to a caste system. Conversely, it referred to a system that deprived individuals of freedom and human dignity. It signified a total lack of social mobility, for the status of an individual was determined by birth or social origin and could never change, regardless of personal merit. There was a hierarchy within the system itself, between superior and inferior

castes. Those belonging to the latter were subjected to many forms of discrimination in social, economic, political and cultural terms; such forms of discrimination could be used as indicators of a caste system.

41. It was the responsibility of States parties to address the issue of the caste system at national level. In most States, all persons were de jure equal before the law. However, a legislative framework served no purpose if it was not implemented. All States should be urged to provide effective legal aid to persons from inferior castes and to facilitate group access to the courts, as strength was often found in numbers. After having exhausted all available domestic remedies, victims of caste-based discrimination should be able to seek action at international level. States parties should not only endeavour to accept the procedures set out in article 14 of the Convention, they should take concrete steps to raise public awareness of the options available to victims. In addition, measures should be taken to address the root problems of the caste system, for example, by raising the awareness of religious authorities and the media. Particular attention should be paid to the women and children who belonged to the caste system, who were especially vulnerable to discrimination.

42. Mr. BOSSUYT said that the NGO testimonies the previous day had served to raise the Committee's awareness of the issue of descent-based discrimination. People who belonged to inferior castes faced discrimination on two counts: first, because they were forced to practice the least desirable professions and second, because they were consequently deprived of fundamental rights such as access to resources, schools and religious establishments, and contacts and marriage outside their social group.

43. There was no doubt that such discrimination fell within the scope of the Convention, therefore justifying the Committee's concern with the issues raised by such practices. It was true that such practices were based not on government policies but on traditions and attitudes that were difficult to eradicate. It was the responsibility of the governments concerned to prevent them and to implement existing anti-discrimination legislation. The legislative framework was largely in place; what was lacking was effective implementation. Further efforts were needed to raise awareness, particularly among local authorities, that such practices were unacceptable and should be punished. Clearly, a sound socio-economic policy making for the improvement of the general welfare of the society in question was the best way to put an end to such practices, together with a guarantee of greater social equity and the realization of economic and social rights. Education would help break the taboos and end the prejudices that stood in the way of the elimination of such practices.

44. The Government of Nepal was to be commended for having participated in the previous day's discussion, illustrating its awareness of the gravity of the problem and of the need to step up efforts to improve the plight of some segments of the population. He also welcomed the contribution made by members of the Sub-Commission on the Protection and Promotion of Human Rights. The holding of thematic discussions was well advised and would help the Committee to be particularly vigilant when considering the reports of States parties that faced such problems.

45. The CHAIRMAN, speaking as a member of the Committee, agreed with previous speakers that the issue of descent was much more far-reaching than the notion of caste. Racial discrimination had to be addressed in terms of the criteria listed in article 1 of the Convention. Particular attention should be paid to descent-based racial discrimination, which existed in many, but by no means all, countries; the Committee should therefore focus on States parties where it was a problem, and take a balanced and practical approach, addressing social, economic and cultural issues.

46. It was important not to get lost in definitions; after all, the issue affected millions of people so could never be covered in its entirety. The term "minority" had not yet been clearly defined despite years of discussion. The Committee had received ample information to formulate a general recommendation, the contents of which would not be exhaustive but would constitute a step in the right direction.

47. Mr. ABOUL-NASR said he was in favour of drafting a general recommendation on the issue. He agreed that the Committee should avoid seeking a definition for every word that was used. In the general recommendation, the Committee should encourage concerned States in their efforts to combat discrimination, paying particular attention to States whose legislation codified the differentiation between people on the basis of descent.

48. Mr. PILLAI drew attention to the fact that in its concluding observations following consideration of the tenth to fourteenth periodic reports of India in 1996 (CERD/C/304/Add.13), the Committee had stated that the term "descent" mentioned in article 1 of the Convention did not solely refer to race. The Committee should clarify whether or not the present discussion referred solely to caste; if so, the Committee was overlooking a major development that had taken place at the global level, namely the World Conference against Racism, which had raised the issue of the discrimination faced by people of African and Asian descent. A similar discussion should therefore be held on discrimination against them.

49. Mr. YUTZIS said that the general consensus seemed to be that the question of descent was more far-reaching than the issue of caste.

50. Mr. RESHETOV said that, while he agreed it would be futile to try to find a strict definition of all the terms used in the discussion, a decision would have to be made on the terminology to be used in the general recommendation. The Committee was not interested in specific terms that applied to one particular country; its priority was to ensure that the reference made to descent would be such that it would not justify discrimination.

51. Mr. de GOUTTES agreed that it was pointless to try to provide an exhaustive definition of the term "descent". It was more important to react to clear manifestations of discrimination based on descent, using indicators such as those he had mentioned earlier in the meeting.

52. Mr. AMIR drew attention to the fact that the word "nomad" was just one of the words that was becoming synonymous with the word "caste", illustrating how difficult it was to provide definitions. The Committee should address the issue of caste rather than descent, as the concept of descent was so far-reaching that it would be difficult to make progress.

53. Mr. THORNBERRY agreed that it would be unwise to try to find a definition for the concept. However, it was possible to identify key areas of work. He was in favour of creating a set of indicators, which would also be of assistance to governments; the indicators could include the notions of hierarchy as opposed to equality; segregation as opposed to integration; and bondage rather than freedom to change one's condition. Such an approach would be without prejudice to further work on the notion of descent and on new situations of discrimination as they arose. He suggested that the general recommendation should recall the legal human rights context in which the Committee worked; it might indicate a precise area in which the Committee wished to encourage Governments to make progress; and it should follow the main lines of the articles of the Convention but highlight some of the questions that did not fall within the scope of any particular article. It should contain recommendations for legal, constitutional and educational measures. The Committee was no doubt faced with a historic opportunity to make a difference.

54. The CHAIRMAN asked Mr. Thornberry to coordinate the work of an open-ended working group to formulate a general recommendation, provisionally comprising Mr. Sicilianos, Mr. Pillai and Mr. de Gouttes. In reply to the suggestion made by Mr. Pillai to hold a discussion on the discrimination faced by people of African and Asian descent, he drew attention to the fact that the Commission on Human Rights had already taken a decision to create a working group to address the issue.

55. Mr. YUTZIS said that the Committee should consider the role of the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

The meeting rose at 1 p.m.